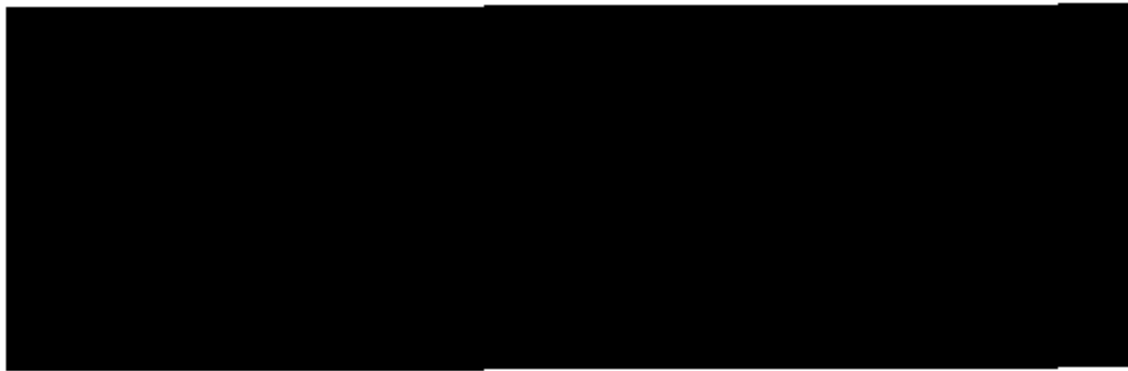


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

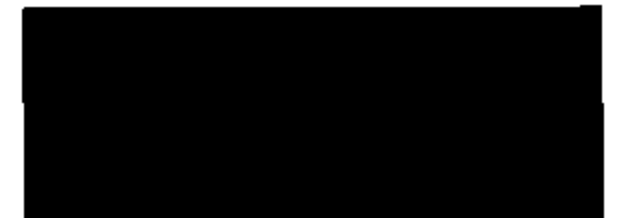


B5

DATE:

OFFICE: NEBRASKA SERVICE CENTER

FILE:



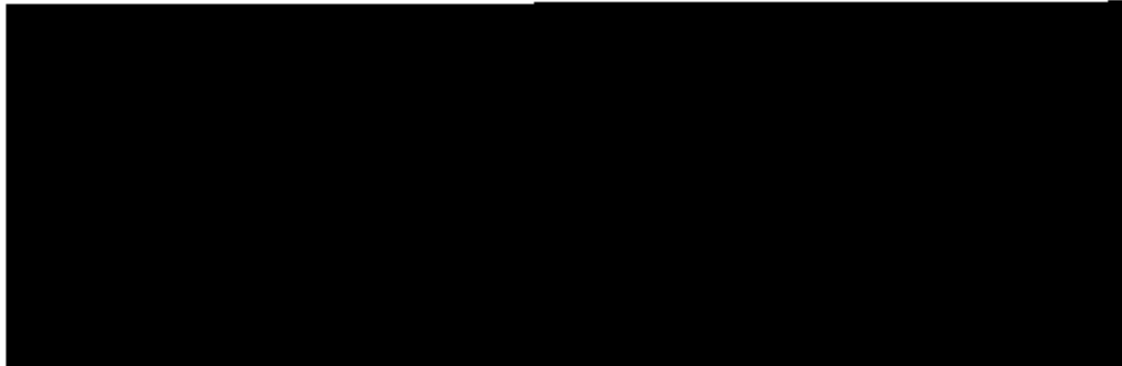
DEC 27 2012

IN RE:



PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center. The subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and reconsider. The motion will be dismissed, the previous decision of the AAO will be affirmed, and the petition will be denied.

The AAO summarily dismissed the appeal dated February 4, 2010 because counsel failed to identify any erroneous conclusion of law or statement of fact. 8 C.F.R. §§ 103.3(a)(1)(v). Further, counsel indicated on the Notice of Appeal or Motion, Form I-290B, that supporting documents would be submitted within 30 days of filing of the appeal. The AAO did not receive a brief or additional evidence. Counsel asserts on motion that the supporting documentation was sent to the Nebraska Service Center. However, 8 C.F.R. §§ 103.3(a)(2)(vii) and (viii), and the instructions for the Form I-290B provide that a brief and evidence may be submitted with the Form I-290B or that these materials could be sent to the AAO within 30 days of filing the appeal. The AAO address was provided in the instructions.

The regulations at 8 C.F.R. § 103.5(a)(2) state, in pertinent part, that "[a] motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." Based on the plain meaning of "new," a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding.¹

In this matter, the petitioner presented no facts or evidence on motion that may be considered "new" under 8 C.F.R. § 103.5(a)(2) and that could be considered a proper basis for a motion to reopen. All evidence submitted on motion was previously available and could have been discovered or presented in the previous proceeding. It is further noted that the petitioner has submitted evidence with this motion that was originally requested by the director in a request for additional evidence dated November 19, 2009. As the petitioner was previously put on notice and provided with a reasonable opportunity to provide the required evidence, the evidence submitted on motion will not be considered "new" and will not be considered a proper basis for a motion to reopen.

The regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part, that "[a] motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or [USCIS] policy." Counsel claims that the AAO erred in its decision by determining that additional supporting documents were not sent to the Nebraska Service Center within 30 days. The argument presented by counsel is flawed and is not supported by any pertinent precedent decisions. Specifically, the regulation at 8 C.F.R. §§ 103.3(a)(2)(vii) and (viii), and the instructions for the Form I-290B provide that a brief and evidence may be submitted with the Form I-290B or that these materials could be sent to the AAO within 30 days of filing the appeal. The AAO address was provided in the instructions. In fact, in the original appeal counsel asserted that it would be providing evidence within thirty days to the AAO. Counsel instead sent the additional evidence to the Nebraska Service Center, which does not

¹The word "new" is defined as "1. having existed or been made for only a short time . . . 3. Just discovered, found, or learned <new evidence>" *Webster's II New Riverside University Dictionary* 792 (1984)(emphasis in original).

comport with instructions or regulation. Therefore, counsel's request does not meet the requirements of a motion to reconsider.

Furthermore, the motion shall be dismissed for failing to meet an applicable requirement. The regulation at 8 C.F.R. § 103.5(a)(1)(iii) lists the filing requirements for motions to reopen and motions to reconsider. Section 103.5(a)(1)(iii)(C) requires that motions be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding." In this matter, the motion does not contain the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C). The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements must be dismissed. Therefore, because the instant motion did not meet the applicable filing requirements listed in 8 C.F.R. § 103.5(a)(1)(iii)(C), it must also be dismissed for this reason.

Motions for the reopening or reconsideration of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *See INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current motion, the movant has not met that burden. The motion will be dismissed.

ORDER: The motion to reopen or reconsider is dismissed and the decision of the AAO dated April 27, 2012 is affirmed. The petition is denied.